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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,  
  
Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**UNSWORN STATEMENT UNDER PENALTY OF PERJURY OF YVETTE  
MELÉNDEZ IN SUPPORT OF REPLY TO DEBTORS' OBJECTION TO MOTION  
FOR ENTRY OF ORDER COMPELLING DEBTOR TO DISCLOSE STATUS OF  
INSURANCE CLAIM AND DEPOSIT ANY INSURANCE PROCEEDS INTO  
SEPARATE ACCOUNT**

(Related Document: Docket No. 2512)

I, Yvette Meléndez, of legal age, married, representative of Santa Rosa Mall, LLC (“Santa Rosa”), and Vice President of Leasing of Commercial Centers Management (“CCM”), which provides managing services to Santa Rosa, do hereby declare under penalty of perjury as follows:

1. My personal circumstances are the aforesated.
2. I make this declaration based upon my personal knowledge as the representative of Santa Rosa and also as the Vice President of Leasing of CCM, in support of the *Reply to Sears’ Objection to Motion for Entry of Order Compelling Debtor to Disclose Status of Insurance Claim and Deposit Any Insurance Proceeds into Separate Account* (the “*Reply*”) to be filed by Santa Rosa in the Chapter 11 bankruptcy of Sears Holdings Corporation (“Sears”).

3. My appearance in this matter is to explain the factual background and address the claims and contentions which have been asserted in Sears' *Objection to Motion for Entry of Order Compelling Debtor to Disclose Status of Insurance Claim and Deposit Any Insurance Proceeds into Separate Account* (Docket No. 2512), and the purported impact of Sears' actions and delay on the operations of the mall and other tenants.

4. Sears has operated Store No. 1915 at Santa Rosa Mall since 1965 until the passing of Hurricane Maria on September 20, 2017, when it closed its doors. A copy of the *Lease Agreement* dated September 16, 1965, executed by Santa Rosa Shopping Center, Inc. and Sears, Roebuck de Puerto Rico, Inc. was duly filed with the Court at Docket No. 1240-1 (the "*Lease Agreement*").

5. Store No. 1915 has always been, and continues to be, the "anchor store" and it is the largest store in Santa Rosa. As such, two (2) of the four (4) main entrances to Santa Rosa are through Sears, affecting traffic flow. Out of a total of approximately 505,641 square feet that comprises Santa Rosa Mall, the Demised Premises constitute 220,640 square feet that Sears leases.

6. Sears is also the main driver of customers for other tenants. Store No. 1915's presence in Santa Rosa is so essential lease agreements for other tenants include co-tenancy clauses directly related to Sears' operations, meaning that if Sears closes, other tenants at the mall have a right to terminate their leases and/or if Sears closes operations for a determined period, other tenants at the mall have the right to have their rents significantly reduced.

7. Since the passing of Hurricane Maria in Puerto Rico on September 20, 2017, Sears' business operations in Store No. 1915 at the Demised Premises in Santa Rosa Mall have completely ceased. The Demised Premises have remained closed and unrepaired since September 20, 2017, although Sears has continued partially operating a car servicing area located in the basement of the Demised Premises. Sears operates a temporary store of approximately 12,485

square feet, since April 2018, which is currently on a month to month basis, and for which it only pays gross rent, as it was meant to be temporary to keep a Sears' presence in Santa Rosa, while the repairs were done.

8. Section 6.01 of the *Lease Agreement* requires Sears to “maintain at [its] sole cost and expense, for the benefit of [Santa Rosa Mall] and [Sears], insurance with respect to the Demised Premises” for risks including “windstorm”. *Lease Agreement*, Docket No. 1240-1, § 6.01(a), p. 26 (emphasis added). Such insurance policy “shall be secured promptly and certificates thereof shall be furnished to [Santa Rosa Mall]” and “shall contain loss payable clause to [Santa Rosa Mall] and [Sears]”. *Id.*, § 6.02(a), pp. 26-27 (emphasis and underline added). Renewals of the insurance policies are also subject to the foregoing. *Id.*, 6.02(b), p. 27.

9. Pursuant to said provision in the *Lease Agreement*, Sears provided certificates of insurance to Santa Rosa. Attached as **Exhibits A, B, and C** are true and correct copies of the certificates of insurance for the years 2015 - 2016, 2016 - 2017, and 2017 - 2018 submitted by Sears.

10. Santa Rosa relied on those representations by Sears in compliance with the *Lease Agreement*.

11. In regard to the insurance proceeds, Section 6.03(b)(3) of the *Lease Agreement* requires as follows:

The net sums recovered by [Santa Rosa Mall] and [Sears] on account of loss or damage whether under the policies taken out as aforesaid, or under other insurance policies taken out by [Sears] and indemnifying for physical loss (as distinguished from the loss of use and occupancy, or profits), shall be deposited in a special account in the name of [Santa Rosa Mall] separate and distinct from all other funds of [Santa Rosa Mall] in a bank or trust company of the City of San Juan, Puerto Rico, approved by [Santa Rosa Mall] and [Sears] to be applied on account of the cost of such restoration or rebuilding, as the case may be, as the work of restoration or rebuilding progresses, and [Sears] shall pay any and all additional moneys required in such restoration or rebuilding in excess of said net sums recovered, and shall be entitled to

receive any surplus, if any, remaining of said deposit after such restoration .. or rebuilding has been completed as aforesaid, provided, however, that should the aforesaid damage by fire or other casualty occur within the last three years of the initial term or any extended term this lease, [Sears] shall have the option to surrender the proceeds of any insurance to [Santa Rosa Mall] and vacate the premises.

12. Sears has recently stated that for Insurance Policy No. PTNAM170177 (which provides coverage for the damages caused by Hurricane Maria in 2017) “there is no endorsement that lists [Santa Rosa Mall] as “loss payee”. Sears’ *Objection to Motion for Entry of Order Compelling Debtor to Disclose Status of Insurance Claim and Deposit Any Insurance Proceeds into Separate Account* (Docket No. 2512, p. 7, ¶ 16).

13. This has serious and direct impact for Santa Rosa. For instance, upon the expiration of the *Lease Agreement*, the Demised Property along with its restorations will ultimately belong to Santa Rosa, and failure to restrict and use the insurance proceeds for the purpose for which they were required will leave the Demised Property without the repairs being done. See *Lease Agreement*, Docket No. 1240-1, § 15.01, p. 44. This is the essence and main reason for the “loss payee” requirement in Section 6.02(a) of the *Lease Agreement* and the other insurance provisions in Sections 6.01-6.05. Id., pp. 26-30. The insurance proceeds must only be used to fix the Demised Premises after the substantial physical damages caused by Hurricane Maria back in September 20, 2017.

14. As it is customary in the shopping mall industry, pursuant to Sections 2.01 and 2.02 of the *Lease Agreement*, Sears is required to pay a fixed rent and an additional percentage rent to be calculated on Sears’ sales in excess of \$15,000,000. See Docket No. 1240-1, p. 14-17. Since the passing of Hurricane Maria about a year and half ago, Sears has only been paying fixed rent and, because Store No. 1915 is not operating, Sears has not paid any percentage rent whatsoever. This reduction in monthly rent reduces Santa Rosa’s cash flow and operations. This is critical especially

because of the length of time since the passing of Hurricane Maria, that is, September 20, 2017 and when one compares it with the amount of percentage rent Sears paid in the previous years. For example, the amount of overage rent Sears paid in the last three years was the following:

Oct 2014 - Sep 2015	\$224,874.42
Oct 2015 - Sep 2016	\$ 192,479.02
Oct 2016 - Sep 2017	\$ 161,855.58

For the period between October 2017 and September 2018, Sears has not paid any overage because it has been closed.

15. Sears initially commenced repairs to Store No. 1915 but since November 2018 have been completely halted.

16. The damages to Store No. 1915 by Hurricane Maria are substantial. In my experience, the repairs of such damages to bring Store No. 1915 back to functional may take an additional six (6) months at best. This means that Santa Rosa's most profitable shopping seasons have been and will be adversely affected by Sears' closing, including Mother's Day, Father's Day, Fourth of July, Back to School, Labor Day Weekend, Halloween, Black Friday and Christmas.

I declare under penalty of perjury that the foregoing is true and correct.

In San Juan, Puerto Rico, this 13<sup>th</sup> of March, 2019.

  
Yvette Meléndez